

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERIC V. HOLMES,

Plaintiff,

vs.

S. SHERMAN, WARDEN, et al.,

Defendants.

1:05-cv-00588-AWI-NEW (DLB) PC

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS** (Doc. 20)

**ORDER DISMISSING ACTION WITH
PREJUDICE AS TO SECTION 1983
CLAIMS FOR FAILURE TO STATE A
CLAIM, AND WITHOUT PREJUDICE
AS TO STATE LAW CLAIMS,** (Doc.
17)

**ORDER THAT THIS DISMISSAL
COUNTS AS A STRIKE PURSUANT TO
28 U.S.C. § 1915(G)**

Plaintiff Eric V. Holmes ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On August 17, 2006, the Magistrate Judge filed a Findings and Recommendations herein which was served on plaintiff and which contained notice to plaintiff that any objection to the

Findings and Recommendations was to be filed within thirty days. After obtaining multiple extensions of time, plaintiff filed an Objection to the Magistrate Judge's Findings and Recommendations on April 30, 2007.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed August 17, 2006, is ADOPTED IN FULL;

2. Plaintiff's section 1983 claims are DISMISSED, with prejudice, for plaintiff's failure to state a claim upon which relief may be granted;

3. Plaintiff's state law claims are DISMISSED without prejudice to filing in state court; and,

4. This dismissal shall count as a strike under 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated: May 10, 2007

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE